

NOTARY NOTES

Newsletter of Licensing Division
North Dakota Secretary of State's Office
Alvin A. Jaeger, Secretary Of State

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Greetings!

This is the fifth biennial edition of *Notary Notes*. As with the previous editions, the purpose of this newsletter is to inform and educate those individuals who have been commissioned as notaries public for the State of North Dakota. It is my most sincere hope that you will take the time to read it and that you will find it helpful in the carrying out of your notarial duties.

The office of Notary Public is not a position to be taken lightly. To begin with, every notary takes an Oath of Office at the time they are commissioned. That oath states, "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of North Dakota and that I will faithfully discharge the duties of the office of Notary Public according to the best of my ability, so help me God (under pains and penalties of perjury)." These are powerful words and they are the reason that the public you serve will trust you and will expect you to execute your notarial duties with the highest level of integrity.

To assist in that responsibility, it is imperative that each notary knows the law. A copy listing the various sections of state law applicable to the duties of a notary are attached. Please take time to study them. While the vast majority of notaries understand their duties and what are required of them, a refresher can be very valuable. It is easy to become too casual about notary duties, which then results in making inadvertent mistakes that have consequences such as revocation of a commission, liability, or the invalidation of documents.

Unfortunately, it happens. Listed elsewhere in this newsletter are incidents of violations, which were settled during the 1999-2001 biennium. The settlement agreements ranged from fines and suspensions to revocations or reprimands.

I cannot over emphasize the fact that a notary is an officer of the state and in a position of trust and responsibility. Therefore, when performing a notarial act, the notary's allegiance must first be to his or her oath of office and the laws of North Dakota. That allegiance is critical to our method of governance and establishing the credibility of signatures on numerous legal documents.

Al Jaeger
Secretary of State

Introducing The Administrative And Notary Staff

They are:

Al Jaeger, Secretary of State, was born and raised in Beulah. He received a degree from Dickinson State University and afterwards taught high school in Killdeer and Kenmare. Before becoming Secretary of State, he was a real estate broker in Fargo. He has been a notary public since 1973.

Cory Fong, Deputy Secretary of State, is a native of Helena, Montana, and a 1994 graduate of Gonzaga University in Spokane, Washington. Cory has been with the Secretary of State's office since 1994. Cory served as Elections Director beginning in 1995 and was responsible for overseeing the agency's Elections Division and the administration of elections statewide. He was appointed Deputy Secretary of State on April 1, 2001.

Mary Feist, Licensing Division Director, has worked in the Secretary of State's office since 1979. Her responsibilities include the commissioning of notaries public, licensing of contractors and charitable solicitations, lobbyist registration, and regulation of boxing. She has been a notary public since April 1, 1991.

Charlotte Zander, Account Tech I, has worked in the Secretary of State's office since 1987. She worked previously in the Central Indexing Unit and in 1998 she transferred to the Administrative and Licensing Division and currently does accounting functions and commissions notaries public. She has been a notary public since October 3, 1998.

Kim Shaw, Executive Assistant, is a native of Mandan, North Dakota, and a 1980 graduate of Seattle Pacific University in Seattle, Washington. She has been with the office of the Secretary of State since 1995 and is responsible for the layout, editing, and formatting of the *Notary News*.



How Many Notaries?

As of June 30, 2001, North Dakota had 11,211 commissioned notaries. This is a decrease of 330, or 3% less, than the number at the end of the previous biennium, which ended on June 30, 1999.

Do You Have An E-Mail Address Or Access To The Internet?

One of the goals of the Secretary of State's office is to distribute notary tips via e-mail. If you are interested in receiving these tips, please send your e-mail address to sosadlic@state.nd.us and you will be added to the distribution list. The tip will also be posted to the Secretary of State's website at www.state.nd.us/sec.

What Is A Notary Public?

A notary public is a responsible person appointed by the state to witness the signing or acknowledgment of important documents and to administer oaths. When appointed, the person becomes an officer of the state and is required to take the oath prescribed for all persons who are civil officers. In doing so, the notary commits to faithfully discharge the duties of his or her office and support the U.S. Constitution and the laws of the State of North Dakota.



What Are The Primary Functions Of A Notary Public?

1. To assure the identity of the person affixing his or her signature to a document or acknowledging a signature to a document.
2. To assure that the person is not signing under any type of duress.
3. To document when and where an act takes place.

Does Notarization Mean That A Document Is True Or Legal?

No. Notaries are not responsible for the accuracy or legality of documents they notarize. The signers are responsible for the content of the documents. The notary is simply responsible for identifying the signer.

In addition, a notary may not give legal advice or draft legal documents unless he or she is an attorney. A non-attorney who does so is subject to criminal prosecution and civil penalties.

May Any Document Be Notarized?

For a document to be notarized, it must contain the following:

1. A text that commits the signer in some manner, such as a deed or affidavit.
2. An original signature (not a photo copy) of the person signing the document.
3. A notarial certificate, which may appear on the document itself or on an attachment.

The notary can then complete the certificate, sign it, and apply his or her seal/stamp to complete the notarization.

Name That Venue!

Every act of notarization must indicate where the notary is physically located at the time the notarization is performed. This is called a “venue.” It usually reads as follows:

"State of _____"
"County of _____"

A correct venue designates the state and county in which the notary is physically located when carrying out a notarial duty. It is not used to list the state and county in which the notary resides or is employed. To be considered complete and valid, the notarization must include the venue.

It is important to remember that no other person besides the notary should complete the venue if it is left blank. The entire notarial act is an attestation of a series of facts by the notary, including the venue. Therefore, the notary's signature and seal constitute the notary's official and formal assertion and attestation of those facts. The correction or completion of any of those facts by another person compromises the notarial act.

What Does “SS” Mean To Notaries?

What does “SS” mean? Does it mean Secretary of State? Is it a part of a name of a ship – U“SS” North Dakota? Perhaps, it is the place on a notary certificate where a signer fills in his or her Social Security Number. No, “SS” doesn’t mean any of these things.

Rather, “SS” is actually an abbreviation for a traditional part of the venue section of a notary certificate. The letters stand for the Latin word “scilicet” which means “in particular” or “namely”. For example,

State of North Dakota)
) SS
County of Burleigh)

Notaries accustomed to seeing “SS” as part of the venue may become concerned if it is missing. Not to worry. The letters “SS” are not required to be added. While they are traditional, the “SS” is not mandatory.

What If There Is No Room For The Seal/Stamp?

Adapted from *The National Notary* July 2001

The notary's seal/stamp must be affixed legibly near the notary's signature. It should not obscure text nor overlap signatures. Normally, when there is insufficient space to affix the seal/stamp in this manner, the notary is expected to create a notarial certificate on the reverse side of the page or on an attachment.

Is The Notarization Complete Without An Acknowledgment Or Jurat?

If a notary just affixes his or her stamp and signs a document, it is not considered a valid and legal act. To be legal, every notarization must have a certificate, which includes wording to indicate exactly what the notary is certifying with his or her act of notarization.

If The Boss Says So, Do I Violate The Law?

One of the leading causes of notary violations is the result of a notary's execution of an unlawful notarization at the direction or coercion of an employer or supervisor. While employers might be liable for wrongful notarizations and for demanding they be made, the notary is the person that is the commissioned officer of the state and the one that has executed an oath to uphold the law.

While many states have laws to protect an employee from harassment by an employer, as public officials, notaries still have to answer for their actions. Claiming they are only subordinates and just doing what they are told, does not relieve notaries of responsibility or liability.

Notaries are obligated to perform their duties according to the law regardless of the circumstances or pressures placed upon them by their employers or supervisors. Notaries cannot be expected to do anything that is unlawful or unreasonable.

Caution! Don't Notarize After Your Commission Expires!

The commissions of approximately 300 notaries public expire each month in North Dakota. While most of these commissions are renewed before the expiration of the commission with no resulting lapse in notarial authority, some are not.



Therefore, to avoid violating the law by performing notarial acts after the expiration of the commission, every notary should always be aware of the expiration date of his or her commission. It is used with every notarial act and appears on the notary's stamp (if one is used). Not only is it unlawful for a notary to notarize after the expiration of his or her commission, it could also raise liability and validity issues.

Tips: Write the annual anniversary date on your calendar, with a special emphasis on the year the commission expires. Also, write your commission expiration date each time you notarize even if it is on your stamp.

What Is My Commission's Expiration Date?

The commission expiration date appears on a notary's Certificate of Commission and is a date that is assigned by the North Dakota Secretary of State.

It is **NOT** the date used by the surety company that provided the notary's bond. When a notary has completed all of the required steps in the application process, the Secretary of State's office will issue the Certificate of Commission, which has the expiration date clearly listed on it. By law, the certificate is to be posted in a conspicuous place. Only the expiration date provided by the Secretary of State's office should be used. No other date should be used.

What Happens When I Am Using The Wrong Expiration Date?

At the present time, the Secretary of State's office has not initiated any administrative action against a notary public for using the wrong expiration date. When becoming aware of it, the notary has been contacted either by telephone or letter. However, this issue is under review and it is quite possible that the Secretary of State's office will soon begin to pursue administrative action, which could result in the revocation of a notary's commission who uses an incorrect expiration date.

How Far In Advance Should I Send In My Notary Renewal?

The Secretary of State's office does not accept renewal applications earlier than two months prior to the expiration of the notary's commission.

Renewal Time Packet Bafflement!

As the commissioning officer for North Dakota notaries public, the Secretary of State is required by state law to send out a renewal notice at least two months prior to the expiration date of the notary's commission.

However, many notaries also receive a renewal packet from bond vendors, in addition, to the official renewal packet

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that is mailed from the Secretary of State's office. Quite often, the notary receives the vendor packet prior to the official state packet. As expected, this dual mailing does cause confusion.

Naturally, the vendor wants to secure the notary's business. Therefore, several vendors request a list (which is a public record) of upcoming notary commission expiration dates on a monthly basis. That is why a notary may receive renewal packets from several vendors in addition to the official renewal packet sent by the Secretary of State.

Generally, the information and forms contained in the vendor packet are accurate. Nevertheless, it is important for notaries to recognize the difference between the official renewal packets sent from the Secretary of State's office and those renewal packets sent from vendors.

While a notary may choose any vendor that he or she wants for their bond, a packet received from a vendor might not necessarily be from the same vendor (surety company) that supplied the bond on the notary's current commission.

A Notary Journal

Notaries public in North Dakota are not required by law to maintain a notary journal. However, a notary journal does help protect the notary and document signer from accusations of wrongdoing and it helps prevent the notary from engaging in wrongdoing. It is invaluable if a notary is asked to testify in court. Detailed information about how to maintain a journal can be found on the Secretary of State's web site at www.state.nd.us/sec.

What If I Change Employers?

It isn't uncommon for an employer to pay the fees related to commissioning of a notary. Nevertheless, the commission is granted to the applicant and the commission stays with that person even though he or she may change employers during the term of their six-year commission as a notary. Therefore, all of the notary's records and seal/stamp follow the notary and must never be retained by an employer.

Privacy Of Social Security And Federal ID Numbers On Documents Submitted To The SOS Office

In compliance with the Federal Privacy Act of 1974, the disclosure by a notary of his or her Social Security Numbers and Federal ID numbers on forms submitted to the Secretary of State's office is voluntary. The numbers are used by the Secretary of State to maintain accurate notary files and cannot be disclosed as a public record.

New Notary Laws Adopted By The 2001 Legislature



House Bill 1133 (Effective

August 1, 2001, N.D.C.C. § 47-19-33) This bill removed the prohibition against a notary taking an acknowledgment or proof when the notary is a member of a limited liability company that is a party to the notarized document. On the other hand, the bill made it clear that an acknowledgment of the execution of an instrument or of affidavit becomes invalid if taken by a notary that is a party to the instrument, a member of any partnership that is a party to the instrument, or if the husband or wife of the notary is a party to the document.

House Bill 1252 (Effective August 1, 2001, N.D.C.C. § 47-19-03 and § 44-06-13.1(6)) This bill makes it clear, that before it can be recorded and except as otherwise provided by law, a document and any acknowledgment must be executed with an original signature.

Senate Bill 2179 (Effective March 22, 2001, N.D.C.C. § 44-06-01 and § 47-19-55) This bill allows a notary, commissioned by the State of North Dakota to perform a notarial act in another state if that state recognizes the notary's authority to do so in that specific jurisdiction.

Senate Bill 2341 (Effective August 1, 2001 N.D.C.C. § 23-06.4-03) This bill allows an individual of sound mind and 18 years of age and older to execute a declaration governing the use, withholding, or withdrawal of life-prolonging treatment. In executing the document, the declarant's signature must be either notarized or witnessed by two individuals. However, when doing so, neither the notary nor the witnesses can: (a) be related to the declarant by blood, marriage, or adoption; (b) entitled to any portion of the estate; (c) have a claim against any portion of the estate; (d) be directly financially responsible for the declarant's medical care; or (e) the attending physician. The notary may, however, be an employee of a health care provider or nursing home providing care to the individual.

Senate Bill 2255 (Effective August 1, 2001) This bill requires a notary to notify the Secretary of State of a change in his or her address within 60 days of when it occurred (under previous law, it was 30 days). While the new law allows extra time for the notary to notify the Secretary of State of an address change, the law also imposes a \$10 penalty if the notary fails to do so.

In addition, when the notary's legal name is changed, the new law requires that a new notary bond rider must be sent to the Secretary of State's office within 60 days of the name change occurring (under previous law, it was 30 days). After the notary notifies the Secretary of State of a name change and until a new notary seal can be obtained, he or she may continue to use the seal with the previous name. However, they must execute any notarial act substantially as follows:

Notary Public North Dakota
Formerly known and commissioned as

My commission
expires _____

Notary Seal



Everything A North Dakota Notary Needs Is On The Web

On the Secretary of State's website at www.state.nd.us/sec, you will find information about:

- ?? What is a notary public
- ?? How to become a notary public
- ?? Notary terms and responsibilities
- ?? North Dakota notary law
- ?? Notary seal/stamp
- ?? Form for address change
- ?? Form for name change
- ?? Current and past issues of *Notary Notes*

Examples Of Notary Violations



1. To falsify the date of a notarization is a fraudulent act that could lead to criminal prosecution for the notary.
2. To notarize the signature of an absent signer cannot be done because the notary's role is to identify signers and authenticate their signatures. This authentication cannot occur if the signer does not physically appear before the notary.

Notary Violations July 1, 1999 To June 30, 2001

(**Note:** The circumstances surrounding each violation are often different and result in differing penalties. Because of space restrictions, only an abbreviated summary of each violation will appear. All violations are a matter of public record.)

July 28, 1999 – Notary violated 44-06-13.1(1) by notarizing a document when evidence indicated the notary witnessed no signature. Penalty: \$200 and commission suspended for two years.

August 4, 1999 – Notary violated 44-06-13.1(3) by notarizing her own signature. Penalty: \$150 and commission suspended for six months

August 10, 1999 – Notary violated 44-06-13.1(1) by signing an affidavit of acknowledgment when the person did not appear in front of the notary. Penalty: Commission revoked for one year.

September 7, 1999 – Notary violated 44-06-13.1(1) by improperly signing a misleading notary block. Penalty: Commission revoked for two years.

January 24, 2000 – Notary violated 44-06-03 for failure to faithfully discharge duties of Notary Public. Penalty: Letter of reprimand.

January 26, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

February 17, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

February 17, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. Penalty: \$50

February 24, 2000 – Notary violated 44-06-13.1(3) by notarizing her own signature twice. Penalty: Commission suspended for six months and a letter of reprimand.

February 24, 2000 – Notary violated 44-06-13.1(3) by notarizing her spouse's signature three times. Penalty: \$150 and commission suspended for three months.

March 13, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

March 29, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

May 4, 2000 – Notary violated 44-06-13.1(3) by notarizing her own signature twice. Penalty: \$150 and commission suspended for six months.

June 12, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

June 12, 2000 – Notary violated 44-06-13.1(3) by notarizing his own signature. Penalty: \$50 and will not be issued a new commission for a period of six months.

June 14, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

July 19, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

July 20, 2000 – Notary violated 44-06-13.1(2), and 44-06-13(3) by notarizing a signature on a document when the notary was a party to the transaction. The notary also notarized her own signature and notarized a document stating she was the wife when in fact had not yet been married. Penalty: \$200 fine and commission revoked for three years.

July 31, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

August 7, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

August 15, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

August 25, 2000 – Notary violated 44-06-13.1(3) by notarizing her own signature. Penalty: Commission revoked for one year.

September 12, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

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October 17, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

October 24, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50.

November 16, 2000 – Notary violated 44-06-13.1(3) by notarizing own signature. Penalty: Commission revoked for one year.

November 20, 2000 – Notary violated 44-06-13.1(3) 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

December 8, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

December 11, 2000 – Notary violated 44-07-13.1(3) by notarizing her own signature. Penalty: \$150 and commission suspended for 6 months.

December 13, 2000 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: Letter of admonishment.

December 20, 2000 – Notary violated 44-07-13.1(3) by notarizing her own signature. Penalty: Commission revoked for one year.

December 22, 2000 – Notary violated 44-06-13.1(1) 44-06-13.1(1) by notarizing a document that was not signed in his presence. Penalty: \$50

January 2, 2001 – Notary violated 44-06-131 (3) notarized his own signature. Penalty: Commission revoked for one year.

January 16, 2001 – Notary violated 44-06- 13.1(3) notarized her own signature. Penalty: \$150 and commission suspended for 6 months.

February 12, 2001 – Notary violated 44-07-13 Notarized when his commission was not issued. Penalty: \$50

February 13, 2001 – Notary violated 44-06-13.1 by notarizing a document that was not signed in her presence. Penalty: \$50

February 13, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in his presence. Penalty: \$50

February 16, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

March 27, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

May 4, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

May 23, 2001 – Notary violated 44-06-13.1(3) notarized her own signature. Penalty: Commission revoked for six months.

May 23, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

June 18, 2001 – Notary violated 44-06-13.1(1) by notarizing a document that was not signed in her presence. Penalty: \$50

June 25, 2001 – Notary violated 44-06-13.1(3) notarized her own signature. Penalty: Commission suspended for 2 years without automatic re-instatement.

New Law Gives Way For Electronic Signatures



North Dakota lawmakers gave way for the use of electronic signatures by state agencies when the 57th Legislative Assembly approved and the Governor signed into law House Bill 1106. Also known as the Uniform Electronic Transaction Act or UETA, this act provides a framework for electronic transactions and commerce in North Dakota. It was passed as an alternative to the Federal Act, better known as E-Sign, which would govern if the North Dakota version of UETA had not passed.

Charged by House Bill 1106, the Records Management Division of the Information Technology Division (ITD), has nearly completed its responsibility of developing a set of guidelines for state agencies to use when accepting electronic signatures. To accomplish this, ITD established a task force representing numerous state agencies interested in using electronic signatures. The Secretary of State's office was represented on this task force.

Although not complete at the time this newsletter was published, the guidelines will provide the following: background information about UETA and E-Sign; a set of core definitions regarding electronic signatures and the surrounding technologies; a description of trustworthy records; steps for implementing electronic signatures within an agency; and guidelines for graduated security levels of electronic signatures.

Self Test Questions



Each of the following questions deals with an important aspect of a notary's duties. In order to test your familiarity with the duties and responsibilities of a notary public, take the following self-examination. The answers to the following true/false questions are located within the context of this edition of *Notary News & Notes* or can be found on the last page.

1. According to a new law recently passed in North Dakota, a North Dakota Notary Public may perform notarial acts anywhere in the United States. (True or False)
2. A notary public may advise persons regarding questions of law. (True or False)
3. The date of the notarization must always be the date the notarization was made. (True or False)

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4. A notary public must verify the identity of an individual who appears before them. (True or False)
5. When the address of a notary public changes, notice in writing must be given to the Secretary of State within 60 days of the change or a penalty of \$10 will be assessed. (True or False)
6. A notary public who is changing their name does not need to notify the Secretary of State until their current commission is up for renewal. (True or False)
7. A notary public must always notarize what their boss wants them to notarize since they are the boss and probably paid for the commission. (True or False)
8. North Dakota notaries public are required by law to keep a journal. (True or False)
9. A notary public must take an Oath of Office in order to act in the capacity of a public official. (True or False)
10. Only a notary can notarize a birth/death certificate. (True or False)

Answers: 1. True; 2. False; 3. True; 4. True; 5. True; 6. False; 7. False; 8. False; 9. True; 10. False

Notary Web Sites

The National Notary Association at:
www.nationalnotary.org

American Society of Notaries at:
www.notaries.org

North Dakota Secretary of State at:
www.state.nd.us/sec

RotaryNotary.com at www.rotarynotary.com

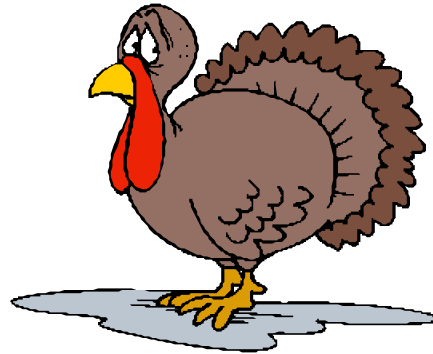
(If you misplace your copy of **Notary Notes** it will be posted on the Secretary of State's Web Site for easy reference.)

Copy of the Law

Attached to this newsletter is a copy of the North Dakota law as it pertains to Notaries Public.



Happy Thanksgiving



2001-2003 North Dakota Blue Book

The Secretary of State has just published the *2001-2003 North Dakota Blue Book*. The 600 plus page book contains contributions from over 70 individuals throughout the state. It is an excellent resource book about all facts of state government and includes information about counties and cities. A special feature section titled the North Dakota Almanac includes state statistics, lists, facts, rankings, symbols, awards, and biographies of all North Dakota Governors.

If interested, please call the ND Heritage Center Museum Store located at (701) 328-2666 for credit card orders. The cost of the book is \$15 plus shipping and handling.

Notary Notes is the newsletter of the Licensing Division in the Secretary of State's Office, 600 East Boulevard Avenue Dept 108 Bismarck ND 58505-0500, (701) 328-2901 or Toll Free: 1-800-352-0867, ext. 8-2901

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